

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re:)	
)	
PAUL TRANSPORTATION, INC.,)	Case No. 10-13022
)	Chapter 11
Debtor.)	
)	
)	

OBJECTION TO DISCLOSURE STATEMENT

GE Capital Corporation, Inc. (“GECC”), Colonial Pacific Leasing Corporation (“CPLC”) and Transport International Pool, Inc. d/b/a Trailer Fleet Services (“TIP”) (collectively the “Objectors”) object to the Disclosure Statement of Debtor Paul Transportation, Inc. (“Debtor”) [Dkt. No. 249] because the Disclosure Statement proposes a plan that (1) is not feasible; (2) violates the absolute priority rule; and (3) therefore provides for treatment of claim that is not fair and equitable under the Code. In addition, the proposed Plan disposes of TIP’s blanket lien on Debtor’s assets and attempts to modify impermissibly the terms of Debtor’s contract with TIP. In support, Objectors state as follow:

INTRODUCTION

Debtor’s Disclosure Statement cannot be approved as drafted and because it accompanies a plan that is not confirmable on its face. TIP is a fully secured creditor entitled to certain protections, which the Plan attempts to remove. Counsel for TIP has discussed certain issues with counsel for Debtor, and it is TIP’s understanding that

Debtor intends to modify the Disclosure Statement and Plan to address TIP's concerns including:

- TIP will retain its blanket lien on Debtor's assets;
- The terms of TIP's original agreement with Debtor will remain in tact, including reasonable default provisions, inspection rights, and location reports;
- Debtor and TIP will negotiate treatment of TIP claims (Class 17, 18 & 19 under the Plan) to adjust the interest rate and amortization of payments to TIP.

GECC and CPLC are general unsecured creditors and are therefore entitled to payment in full of their claims before Debtor's principal, Troy Paul, is permitted to retain any equity in Debtor. As proposed, Debtor proposes to pay its unsecured creditors a maximum of 40% of their claims over ten years with no interest--such treatment clearly violates the "fair and equitable" requirements under the Code. Moreover, Debtor's proposed Plan violates the absolute priority rule where Troy Paul will retain his equity in Debtor. Accordingly, Debtor's Disclosure Statement promotes a Plan that cannot be confirmed, and Debtor's Disclosure Statement should not be approved.

FACTS

A. Debtor's Relationship With GECC And CPLC

1. On or about August 10, 2007, GECC, as lessor, entered into a Truck Lease Agreement (the "GECC Lease") with Debtor whereby Debtor leased certain vehicles and trailers from GECC. The GECC Lease contains general terms and conditions that apply to every vehicle leased thereunder.

2. From August 10, 2007 to August 19, 2008, Debtor leased multiple vehicles and trailers from GECC pursuant to the Master Lease.

3. Debtor defaulted under the GECC Lease and, as of January 1, 2010, Debtor was indebted to GECC under the GECC Lease in the amount of \$6,886,336.36, plus interest thereon accruing.

4. On June 7, 2007, Debtor executed and delivered to CitiCapital Commercial Corporation ("CCC") a Loan and Security Agreement in the amount of \$566, 262.60 including interest accruing at 7.13% per annum payable over sixty (60) months.

5. On August 9, 2007, Debtor executed and delivered to CCC a second Loan and Security Agreement in the amount of \$632,731.20 including accruing at 7.12% per annum payable over sixty (60) months.

6. On October 5, 2007, Debtor executed and delivered to CCC a third Loan and Security Agreement in the amount of \$660,972.00 including interest accruing at 6.89% per annum payable over sixty (60) months.

7. Under the CCC, Loan and Security Agreements, Debtor granted CCC a security interest in and to certain equipment--specifically trailers.

8. By virtue of certain business transactions, CCC became Citicorp Leasing, which in turn, became GECC.

9. On July 31, 2009, GECC assigned its interests in the CCC Notes and Security Agreements to CPLC.

10. Accordingly, CPLC now holds a first and prior security agreement in and to the CCC collateral.

11. GECC and CPLC have recovered some of their collateral. Taking such recovery into account, GECC holds an unsecured deficiency claim of \$1,640, 674.58, and CPLC holds an unsecured deficiency claim of \$328,947.72.

B. Debtor's Relationship With TIP

12. On June 13, 2008, in connection with the purchase of certain equipment, Debtor executed and delivered to TIP Promissory Note-01 in the principal amount of \$1,228,816.88 with interest at 8.206478% per annum payable over sixty (60) months.

13. Also on June 13, 2008, Debtor executed a Master Security Agreement in favor of TIP granting TIP a security interest in and to "all personal property" of Debtor including but not limited to accounts, goods, and equipment.

14. On July 2, 2008, in connection with the purchase of certain equipment Debtor executed and delivered to TIP three notes: Promissory Note-03 in the principal amount of \$390,578.41 with interest at 8.128411% per annum payable over forty-eight (48) months; Promissory Note-04 in the principal amount of \$2,314,271.74 with interest at 8.206478% per annum payable over sixty (60) months; and Promissory Note-05 in the principal amount of \$709,333.49 with interest at 8.241147% per annum payable over seventy-two (72) months. Collectively the June 13, 2008 and July 2, 2008 notes from Debtor to TIP are referred to herein as the "TIP Notes."

15. The July 2, 2008 Notes are secured as evidenced by the Master Security Agreement and related documents.

16. The Master Security Agreement was amended August 27, 2009.

17. TIP's interest in and to certain equipment is properly perfected by and through the lien entries set forth on the certificates of title.

18. TIP's interest in its other collateral is perfected by virtue of a UCC-1 filed in the records of the Oklahoma County Clerk, Instrument Nos. 200802207272600 and 200802208443300.

19. Debtor defaulted under the TIP Notes and, as of January 1, 2010, Debtor was indebted to TIP in the amount of \$5,565,987.61, plus interest thereon accruing.

20. Upon information and belief, TIP is fully secured in its collateral.

OBJECTION AND BRIEF

A. The Disclosure Statement Does not Include Adequate Information

Disclosure of adequate information is a vital aspect of chapter 11. The House Report accompanying § 1125 calls disclosure of adequate information the "key to the consolidation chapter." H.R. Rep. 95 595, 95th Cong., 1st Sess. (1977). Similarly, cases applying § 1125 have called disclosure "[o]ne of the fundamental policies underlying the Chapter 11 reorganization process." *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988). Accordingly, a disclosure statement must supply information "of a kind, and in sufficient detail, as far as is reasonably practicable . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). Relevant factors for determining the adequacy of a disclosure statement may include the following:

1. The events that led to the filing of a bankruptcy petition;
2. A description of available assets and their value;

3. The anticipated future of the company;
4. The source of information stated in the disclosure statement;
5. A disclaimer;
6. The present condition of the debtor while in Chapter 11;
7. The scheduled claims;
8. The estimated return to creditors under a Chapter 7 liquidation;
9. The accounting method utilized to produce financial information and the name of the accountants responsible for such information;
10. The future management of the debtor;
11. The Chapter 11 plan or a summary thereof;
12. The estimated administrative expenses, including attorneys' and accountants' fees;
13. The collectability of accounts receivable;
14. Financial information, data, valuations, or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan;
15. Information relevant to the risks posed to creditors under the plan;
16. The actual or projected realizable value from recovery of preferential transfers or otherwise voidable transfers;
17. Litigation likely to arise in a nonbankruptcy context;
18. Tax attributes of the debtor; and
19. The relationship of the debtor with the affiliates.

In re United States Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996)(citing *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)). While many of these items are addressed in the proposed Disclosure Statement, some are not. For example, future prospects to maintain and grow the business (anticipated future of the

company); description of the present condition of the Debtor and the Debtor's ability to service the anticipated continuing debt obligations (present condition of the debtor while in Chapter 11); disclosure as to what professionals prepared the liquidation analysis in order to analyze the estimated return to creditors under a Chapter 7 liquidation; and actual or projected realizable value from recovery of preferential transfers or otherwise voidable transfers. Lastly, Paul Transportation, Inc.'s relationship with Paul Logistics needs to be fully disclosed together with Debtor's attempts to and anticipated financial impact of the restructure of financial obligations due and owing Paul Logistics.

B. Debtor proposes a plan that is not feasible and cannot be confirmed.

Objectors are concerned about the feasibility of Debtor's plan where it appears that it does not allow sufficient funds for Debtor to service its debts as proposed. Troy Paul is the principal of Debtor. In 2009, Troy Paul's father formed Paul Logistics, Inc. ("Paul Logistics") to purchase certain assets of Debtor in an effort to avoid foreclosure of those assets. Paul Logistics subsequently leased those assets back to Debtor. Under this arrangement, Debtor proposes to assume its lease agreement with Paul Logistics, leaving in place monthly payments to Paul Logistics in the amount of \$95,717.00, including interest at the contract rate of 12%. In contrast, Debtor proposes to modify TIP's contract rate of interest despite TIP's fully secured status. Debtor proposes to make a total monthly payment to TIP in the amount of \$69,069.70 and to reduce TIP's contract rates of interest to 5.25%. In addition, Debtor proposes to stretch the terms of TIP's notes over 4.5 years from the Effective Date of the Plan. Debtor's financial statements indicate that with the full-amount payments to Paul Logistics, Debtor's ability to make its monthly

plan payments is tenuous. In addition, Debtor has built in default provisions that relieve Debtor of its obligations under its contract with TIP. Debtor's Disclosure Statement therefore raises serious concerns as to feasibility.

C. Debtor's plan violates the absolute priority rule.

Section 1129(b)(2) requires that a plan be "fair and equitable" in order to be approved. "Fair and equitable" means, among other things, that "[w]ith respect to a class of unsecured claims, the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property." 11 U.S.C. § 1129(b)(2)(B)(ii) (the "absolute priority rule"). Under the absolute priority rule, a debtor's equity owners are not entitled to retain their interest in the debtor unless and until all creditors are paid in full.

Here, Debtor's plan violates the absolute priority rule by allowing Debtor's equity holder, Troy Paul, to retain his equity interest in Debtor. Class 22, consisting of general unsecured claims exceeding \$10,000, controls much of Debtor's proposed Plan. If Class 22 claims accept the Plan proposed, then Troy Paul retains his interest in Debtor. The treatment of Class 22, however, proposes to pay such unsecured creditors only 40% of their claims over ten (10) years with no interest. Moreover, if Class 22 accepts, then Class 21 unsecured claims will receive only 35% of their claims on the Effective Date. Accordingly, if the Plan is confirmed, Troy Paul will retain his equity interest when certain general unsecured creditors are being paid less than half of their claims. If Class 22 rejects the proposed Plan, then Class 21 and Class 22 receive 100% of any equity remaining after payment of priority claims--this treatment ignores TIP's blanket lien on

Debtor's assets. Moreover, regardless of whether Class 22 accepts or rejects the proposed Plan, Troy Paul retains control. If Class 22 accepts, the Plan violates the absolute priority rule by allowing Troy Paul to retain his interest in Debtor while paying unsecured creditors only a percentage of their claims. Accordingly, Debtor's Disclosure Statement cannot be approved.

CONCLUSION

Debtor's Disclosure Statement cannot be approved where it supports a Plan which contains unconfirmable provisions and hence the Court should not allow Debtor to waste funds soliciting its acceptance. Therefore, for the reasons set forth, Objectors request entry of an Order disapproving Debtor's Disclosure Statement and granting all other relief this Court deems necessary and just.

Respectfully submitted,

s/ Regan S. Beatty

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INTERNATIONAL POOL, INC. AND COLONIAL
PACIFIC LEASING CORPORATION

CERTIFICATE OF SERVICE

I certify that the above-referenced document was served via the Court's Electronic Mailing System on the 14th day of January, 2011 as follows:

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I further certify that the above-referenced document was served via the United States Postal Service, postage prepaid, on the 14th day of January, 2011 as follows:

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Comdata Corp PA427
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Brentwood, TN 37027

Goodyear Tire and Rubber Co
P.O. Box 277348
Atlanta, GA 30384-7348

Dynasty Transportation, Inc.
P.O. Box 91825
Lafayette, LA 70509

Kansas Department of Revenue
Division of Property Valuation
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Topeka, KS 66625

Miller Truck Lines, Inc.
Dept. 1966
Tulsa, OK 74182

Dothan Tarpaulin Products
6275 US Highway 231 South
Dothan, AL 36302

Ameriquet
P.O. Box 828997
Philadelphia, PA 19182-8997

Katz Sapper and Miller
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Indianapolis, IN 46236-0670

Oklahoma Tax Commission Withholding
P.O. Box 26860
Oklahoma City, OK 73126-0860

Rush Truck Centers
Regions Interstate Billing
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Doonan Peterbilt of Great Bend
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